



Ontario  
Securities  
Commission  
3S8

Commission des  
valeurs mobilières  
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, c. S.5, AS AMENDED**

**- and -**

**CI INVESTMENTS INC.**

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**SETTLEMENT AGREEMENT BETWEEN  
STAFF OF THE COMMISSION and  
CI INVESTMENTS INC.**

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**PART I- INTRODUCTION**

1. The Ontario Securities Commission (the “**Commission**”) will issue a Notice of Hearing dated February 5, 2016 (the “**Notice of Hearing**”) to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c.S-5, as amended (the “**Act**”), it is in the public interest for the Commission to make certain orders in respect of CI Investments Inc. (“**CII**”).
2. CII is a corporation incorporated pursuant to the laws of Ontario. CII is registered with the Commission in a number of categories, including as an Investment Fund Manager and Portfolio Manager.

3. In June 2015, CII self-reported a matter to Staff of the Commission (“**Commission Staff**”) relating to certain interest (the “**Interest**”) earned on money deposited by seven mutual funds (the “**Forward Funds**”) as collateral for forward purchase agreements that were unique to these Forward Funds. The Forward Funds were new products offered by CII which used cash collateral forward purchase agreements in order to achieve tax efficiencies for investors. Since December 2009, approximately \$156.1 million in Interest has accumulated in bank accounts set up by each of the Forward Funds; however, as described in Part III below, the Interest was not recorded as an asset in the accounts of the respective Forward Funds and not included in the net asset value (“**NAV**”) calculation of the Forward Funds. As a result the NAV of each Forward Fund (and any fund that invested in the Forward Funds) was understated for several years and unitholders bought and redeemed units in the various funds at an understated value. A total of 23 CII mutual funds and 69 segregated funds invested some of their assets, directly or indirectly, in the Forward Funds. The Forward Funds and the CII mutual funds and segregated funds that invested in the Forward Funds are referred to herein as the “**Affected Funds**”.
  4. When CII self-reported to Commission Staff, it advised Commission Staff that it intended, to the extent possible, to put investors in the Affected Funds back into the economic position they would have been in if the Interest had been recorded. The entire amount of the Interest has been at all times and remains in bank accounts as an asset of the Forward Funds and has never been co-mingled with the property of CII nor did CII earn any management fees on the Interest. As described herein, the Interest will be distributed to the investors in the Affected Funds.
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5. During Commission Staff's investigation of the matter, CII provided prompt, detailed and candid co-operation to Commission Staff.
6. As described in Part III below, it is Commission Staff's position that in relation to this matter, CII did not have an adequate system of controls and supervision to sufficiently address the unique cash collateral feature of the Forward Funds and to ensure that the Interest earned in the cash collateral accounts was recorded and included in the NAV calculation of the Forward Funds, such that the unitholders' NAV was understated (the "**Forward Fund Control and Supervision Inadequacy**").

## **PART II- JOINT SETTLEMENT RECOMMENDATION**

7. Commission Staff and CII have agreed to a settlement of the proceedings initiated in respect of CII by the Notice of Hearing (the "**Proceeding**") on the basis of the terms and conditions set out in this settlement agreement (this "**Settlement Agreement**").
  8. Pursuant to this Settlement Agreement, Commission Staff agree to recommend to the Commission that the Proceeding be resolved and disposed of in accordance with the terms and conditions contained herein.
  9. It is Commission Staff's position that:
    - a) The statement of facts set out by Commission Staff in Part III below, which is based on an investigation carried out by Commission Staff following the self-reporting by CII, is supported by the evidence reviewed by Commission Staff and the conclusions contained in Part III are reasonable; and
    - b) It is in the public interest for the Commission to approve this Settlement Agreement, having regard to the following considerations:
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- i. Commission Staff's allegations are that CII failed to establish, maintain and apply policies and procedures to establish controls and supervision:
    - A. sufficient to (1) provide reasonable assurance that CII, and each person acting on behalf of CII, complied with securities legislation; (2) manage the risks associated with the development and monitoring of new products in accordance with prudent business practices; (3) ensure that the NAVs of the Forward Funds were accurate; and (4) monitor and supervise its third-party service providers;
    - B. that were reasonably effective in identifying and promptly correcting the Forward Fund Control and Supervision Inadequacy in a timely manner;
  - ii. Commission Staff do not allege and have found no evidence of dishonest or intentional misconduct by CII;
  - iii. CII discovered and self-reported the failure to properly record the Interest as an asset of the Forward Funds;
  - iv. The Interest remained in bank accounts established for the Forward Funds and has never been co-mingled with assets of CII;
  - v. During the investigation of the Forward Fund Control and Supervision Inadequacy following the self-reporting, CII provided prompt, detailed and candid cooperation to Commission Staff;
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- vi. When it self-reported the failure to properly record the Interest as an asset of the Forward Funds, CII stated an intention, to the extent possible, to put former and current investors in the Affected Funds who purchased units of Affected Funds prior to May 31, 2015 (the “**Affected Investors**”) back into the economic position they would have been in if this matter had not occurred;
  - vii. As part of this Settlement Agreement, CII has agreed to pay an amount equal to the Interest to Affected Investors, and other appropriate compensation, in accordance with a plan submitted by CII to Commission Staff and presented to the Commission (the “**Compensation Plan**”), and will begin to implement the Compensation Plan within 45 days of CII completing its testing of the Compensation Plan model, unless Commission Staff consent to a later date. CII anticipates implementing the Compensation Plan in March 2016.
  - viii. the Compensation Plan provides, among other things:
    - A. that an amount of approximately \$156.1 million which is equal to the full amount of the unrecorded Interest will be distributed to Affected Investors, without deduction of any management and administrative fees, in the respective proportions required to ensure that the Affected Investors are, to the extent reasonably possible, put back into the economic position they would have been in if the Interest
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had been properly recorded as an asset of the respective Forward Fund including, without limitation, any penalties or interest payable by the Affected Investors as a result of the late payment of tax in respect of the Interest earned by the Forward Funds;

- B. to the extent that, as a result of the Forward Fund Control and Supervision Inadequacy, any Affected Investors received amounts in excess of what they were entitled to, CII will not seek reimbursement. Under the Compensation Plan, CII will increase the total amount of Interest payable to Affected Investors by the amount of any such excess payment;
  - C. that Affected Investors who have redeemed their units in an Affected Fund prior to February 29, 2016 will receive an amount in respect of the time value of money on the money that they are receiving under the Compensation Plan calculated using a simple rate of interest of 3% per annum from the date of redemption to the payment date;
  - D. that there will be a \$10.00 *de minimis* exception;
  - E. a detailed methodology to be used in determining how the Interest will be allocated to Affected Investors;
  - F. the approach to be taken to contacting and making payments to Affected Investors;
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- G. the approach to be taken if CII is not able to locate any Affected Investors;
  - H. the timing of implementation of the Compensation Plan;
  - and
  - I. the resolution of Affected Investor inquiries through an escalation process.
- ix. CII has advised Commission Staff that it is not aware of any other instance of a Forward Fund Control and Supervision Inadequacy other than the Forward Fund Control and Supervision Inadequacy described herein;
- x. CII has taken corrective action to address the Forward Fund Control and Supervision Inadequacy. CII has developed and is implementing procedures and controls as well as supervisory and monitoring systems designed to enhance CII's control and supervision procedures (the "**Enhanced Control and Supervision Procedures**"). A copy of the Enhanced Control and Supervision Procedures has been provided to staff of the Compliance and Registration Branch. As part of this Settlement Agreement, CII is required to report to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission (the "**OSC Manager**") on its ongoing progress in developing and/or implementing the Enhanced Control and Supervision Procedures;
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- xi. CII has agreed to make a voluntary payment of \$8,000,000 to the Commission to advance the Commission's mandate of protecting investors and fostering fair and efficient capital markets. CII has also agreed to pay Commission Staff's costs of \$50,000;
  - xii. the total agreed voluntary settlement amount of \$8,050,000 will be paid by wire transfer upon completion of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission; and
  - xiii. the terms of this Settlement Agreement are reasonable and appropriate in all the circumstances, having regard to the mitigating factors described herein and the principles of general and specific deterrence. Commission Staff are of the view that, the distributions to be made to Affected Investors by CII of approximately \$156.1 million, and other appropriate compensation, in addition to the voluntary payments referred to above, will emphasize to the marketplace that Commission Staff expect registrants to have a compliance system with appropriate controls and supervision in place which:
    - A. provides reasonable assurance that registrants, and each person acting on behalf of registrants, are (1) complying with securities legislation; (2) appropriately managing the risks associated with the development and monitoring of
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new products; (3) accurately calculating NAVs of the funds managed by them at all times; and (4) monitoring and supervising third-party service providers;

B. is reasonably effective in promptly identifying and correcting cases of non-compliance and internal control weaknesses.

10. CII neither admits nor denies the accuracy of the facts or conclusions of Commission Staff as set out in Part III of this Settlement Agreement (nor as set out in Part I and Part II of this Settlement Agreement, to the extent that they are also referenced in Part III).

11. CII agrees to this Settlement Agreement and to the making of an order in the form attached as Schedule "A".

### **PART III-COMMISSION STAFF'S STATEMENT OF FACTS AND CONCLUSIONS**

#### **A. Overview**

12. In June 2015, CII self-reported to Commission Staff that the approximately \$156.1 million of Interest that had been earned on money deposited by the Forward Funds as collateral for forward purchase agreements had not been properly recorded as an asset in the accounting records of the Forward Funds with the result that the NAVs of the Forward Funds and any funds that had invested in the Forward Funds had been understated for several years. The principal amount of the collateral has been properly recorded in the accounting records of the Forward Funds. As of May 29, 2015, the total NAV of the Forward Funds was approximately \$9.8 billion.

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13. The Interest is and has at all times remained in bank accounts as an asset of the Forward Funds and has never been comingled with the property of CII. As described in this Settlement Agreement, an amount equal to the full amount of the unrecorded Interest, and other appropriate compensation, will be distributed to Affected Investors, without deduction of any management or administrative fees.
14. Commission Staff have concluded that the failure to record the Interest in the accounting records of the Forward Funds was a result of the Forward Fund Control and Supervision Inadequacy.
15. As set out below, CII has taken remedial steps to correct the Forward Fund Control and Supervision Inadequacy, including the Enhanced Control and Supervision Procedures.

**B. The Forward Fund Control and Supervision Inadequacy**

16. From December 2009 to January 2012, CII launched the Forward Funds, which used cash collateral forward purchase agreements in order to gain exposure to investment opportunities on a tax efficient basis. A total of 23 CII mutual funds, as well as 69 segregated funds, invested, directly or indirectly, in the Forward Funds.
  17. Pursuant to the forward purchase agreements, the Forward Funds were required to place cash on deposit with a bank as collateral for their obligations under the forward purchase agreements. The Forward Funds set up interest earning bank accounts with a Canadian chartered bank and deposited the collateral into these accounts as required from time to time. It was intended that the interest earned on the bank accounts would offset hedge fees charged by the counterparty to the forward purchase agreements.
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18. The Interest was earned and paid into the bank accounts monthly and still remains in the bank accounts set up by the respective Forward Funds.
  19. In March 2013, the federal government introduced provisions in the budget which would limit the tax-efficiency of the Forward Fund arrangements with the result that six of the Forward Funds were closed to investments in May 2013. The seventh Forward Fund remains open for investment because its objective was not solely tax efficient investing.
  20. In April 2015, in connection with the termination of two of the forward purchase agreements, CII determined that the Interest had not been recorded in the accounting records of the Forward Funds and had not been included as an asset in the NAV calculation of the Forward Funds, causing the NAVs of all of the Affected Funds to be understated for several years and, accordingly, unitholders in the Affected Funds bought and redeemed units in the various funds at an understated value.
  21. CII immediately commenced an investigation into this matter and retained Deloitte LLP (“**Deloitte**”) to:
    - a. conduct an independent investigation into the circumstances and possible consequences of the accrued and unrecorded Interest;
    - b. consider and analyse possible remediating measures, including measures to be taken to distribute the Interest to the Affected Investors and the Enhanced Control and Supervision Procedures; and
    - c. test the model which implements the Compensation Plan.
  22. For several years, CII has outsourced certain administrative and custodial duties to a major financial institution that specializes in these types of services (the “**Third-**
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**party Service Provider**”) which, in its capacity as fund administrator and as directed by CII, provides fund accounting services for CII’s funds, including the Forward Funds, and calculates the NAVs of each Forward Fund and fund invested in the Forward Funds.

23. CII remains responsible and accountable for the accuracy of the accounting records and NAVs of the mutual funds it manages and it is required to establish a system of controls for monitoring outsourced service providers to ensure such service providers are complying with securities legislation and prudent business practices, including the Third-party Service Provider.
  24. At the conclusion of the investigation undertaken by Deloitte, it was determined that there was a misunderstanding about the unique nature of these Forward Funds and in particular the Interest that was accruing in the cash collateral bank accounts.
  25. Although CII believed that the Third-party Service Provider was receiving copies of the bank statements for the cash collateral accounts, CII did not take steps to ensure that it had provided access to bank statements, which prevented the Third-party Service Provider from performing proper reconciliations of the Interest. Nor did CII properly instruct the Third-party Service Provider regarding the unique nature of the cash collateral forward agreements.
  26. Four separate occasions have been identified by Deloitte where CII might have realized earlier that it had not properly instructed the Third-party Service Provider and did not provide the Third-party Service Provider with sufficient information concerning the cash collateral accounts to properly record the Interest.
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27. On one of these occasions, in December 2011, the Third-party Service Provider alerted CII to the fact that it had not been recording the Interest in one of the Forward Funds. However, CII did not take steps to ensure that the Interest was thereafter properly recorded in the accounts of the Forward Funds. Furthermore, on realizing that the Interest had not been recorded, CII did not treat this as a NAV error and follow its policies and procedures for such an event, but rather followed the protocol used to deal with the recording of unanticipated income by amortizing the accumulated Interest.
28. CII's internal policy, if followed, should have led to the early identification of the fact that the Interest was not being recorded in the accounting records of the Forward Funds. The failure to record the Interest should have been treated as an error in the NAV of the Forward Funds and this should have led CII to escalate this matter to its compliance department and ultimately to the Commission as a NAV adjustment at an early stage.
29. Commission Staff has determined that CII's monitoring and oversight of the Third-party Service Provider, and its system of internal controls and supervision, were not sufficient to ensure that CII properly instructed the Third-party Service Provider regarding the unique nature of the cash collateral forward purchase agreements and that Interest accruing on cash collateral bank accounts was being correctly recorded with the result that, rather than identify and deal with this matter on any of the four occasions identified (or otherwise), the problem continued until four months after certain of the forward purchase agreements were terminated.
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30. Both before and after the identification of the Forward Fund Control and Supervision Inadequacy, CII implemented changes to its systems of internal controls and supervision to address such inadequacies, including the following Enhanced Control and Supervision Procedures:

- a. In 2012, CII created a new project review committee with responsibility to apply an appropriate project management framework for all strategic initiatives including new product launches with responsibility to ensure that all parties understand the products and that controls are in place to ensure correct accounting;
  - b. In 2012, CII formalized a product review committee to review and approve all product initiatives. This committee is comprised of senior executives of CII;
  - c. In 2014, CII started the build-out of a new portfolio management system feature to reconcile cash and collateral account balances between CII's portfolio management system and the fund administrator;
  - d. In 2015, formalized checklists have been developed and enhanced, which include a process to ensure that there is adequate information regarding all products; and
  - e. In 2015, a new policy was introduced to require that all fund bank accounts have the fund administrator as the responsible party for receipt of bank statements.
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### **C. Compensation Plan**

31. CII has designed the Compensation Plan and Deloitte is independently validating the compensation payments calculated by CII by programming a completely separate remediation model and verifying that the results generated from its model and the CII model are the same in all material respects.
32. In accordance with the Compensation Plan:
- a. Each Affected Investor will receive an amount calculated to ensure that the Affected Investor is, to the extent reasonably possible, put back into the economic position that they would have been in had the correct NAV been applied at the time the investment (or disposition) was made, and without deduction of any fees; including, without limitation, any penalties or interest payable by the Affected Investors as a result of the late payment of tax in respect of the Interest earned by the Forward Funds.
  - b. To the extent that, as a result of the Forward Fund Control and Supervision Inadequacy, any Affected Investors received amounts in excess of what they were entitled to, CII will not seek reimbursement. Under the Compensation Plan, CII will increase the total amount of Interest payable to Affected Investors by the amount of any such excess payment.
  - c. Each Affected Investor who redeemed units in an Affected Fund prior to February 29, 2016, will also receive payment of an amount representing the time value of money in respect of any adjusted redemption proceeds that should have been received calculated using a simple rate of interest of 3% per annum from the date of redemption to the payment date.
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- d. There will be a \$10.00 *de minimus* exception.

#### **D. Breaches of Securities Law**

33. With respect to the Forward Fund Control and Supervision Inadequacy, CII failed to establish, maintain and apply policies and procedures to establish a system of controls and supervision:

- a. sufficient to (1) provide reasonable assurance that CII, and the individuals acting on behalf of CII, were in compliance with securities legislation; (2) manage the risks associated with the development and monitoring of new products in accordance with prudent business practices; (3) accurately calculate NAVs of the Forward Funds at all times such that the NAV is not understated for unitholders; and (4) monitor and supervise its third-party service providers;
- b. that was reasonably likely to identify and correct the Forward Fund Control and Supervision Inadequacy in a timely manner.

34. As a result, CII breached section 11.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.

#### **E. Mitigating Factors**

35. Commission Staff do not allege, and have found no evidence of dishonest or intentional misconduct by CII. CII discovered and self-reported the Forward Fund Control and Supervision Inadequacy to Commission Staff in a timely manner.

36. During the investigation of the Forward Fund Control and Supervision Inadequacy following the self-reporting by CII, CII provided prompt, detailed and candid cooperation to Commission Staff.

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37. CII formulated a plan to distribute the entire amount of the Interest and to pay other appropriate compensation to Affected Investors, without deduction of \$4,000,000 in management fees which it was contractually entitled to receive.
  38. CII retained Deloitte to conduct an independent investigation of the Forward Fund Control and Supervision Inadequacy, consider and analyze possible remediating measures and to test the Compensation Plan.
  39. The Compensation Plan developed by CII is designed to ensure that to the extent reasonably possible, Affected Investors are put back into the economic position they would have been in if the Interest had been properly recorded as an asset of the respective Forward Funds and Deloitte will independently validate the compensation payments calculated by CII pursuant to the Compensation Plan.
  40. CII has advised Commission Staff that it is not aware of any other instance of a Forward Fund Control and Supervision Inadequacy other than the Forward Fund Control and Supervision Inadequacy described herein.
  41. CII has, on its own initiative, taken other corrective measures with respect to the Forward Fund Control and Supervision Inadequacy. CII has developed and is implementing the Enhanced Control and Supervision Procedures. As part of this Settlement Agreement, CII is required to report to the OSC Manager on its ongoing progress in developing and implementing the Enhanced Control and Supervision Procedures.
  42. CII has co-operated with Commission Staff with a view to finalizing the Compensation Plan outlined in this Settlement Agreement.
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43. As part of this Settlement Agreement, CII has agreed to pay Affected Investors, in accordance with the Compensation Plan and this Settlement Agreement which shall govern in the case of any conflict
44. CII has agreed to make a voluntary payment of \$8,000,000 to the Commission to advance the Commission's mandate of protecting investors and fostering fair and efficient capital markets and to make a further voluntary payment of \$50,000 to be allocated to costs.
45. The total agreed voluntary settlement amount of \$8,050,000 will be paid by wire transfer upon completion of the hearing to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission.
46. The terms of settlement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the amounts to be paid as compensation to Affected Investors by CII of approximately \$156.1 million, an amount equal to the unrecorded Interest, and other appropriate compensation, in accordance with this Settlement Agreement and the Compensation Plan, in addition to the voluntary payments referred to above, will emphasize to the marketplace that Commission Staff expect registrants to have appropriate controls and supervision in place which are reasonably likely to allow registrants to identify and correct matters of this kind in a timely manner.
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## PART IV- TERMS OF SETTLEMENT

### CII Undertaking

47. By signing this Settlement Agreement, CII undertakes to:

- a. pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with this Settlement Agreement and the Compensation Plan;
- b. make a voluntary payment of \$50,000, to reimburse the Commission for costs incurred or to be incurred by it in accordance with subsection 3.4(2)(a) of the Act; and
- c. make a further voluntary payment of \$8,000,000, to be designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act,

48. CII agrees to the terms of settlement listed below and consents to the Order attached hereto, pursuant to sections 127 and section 127.1 of the Act, that:

- a. the Settlement Agreement is approved;
  - b. within 8 months of the approval of this Settlement Agreement, CII shall submit a letter (the “**Attestation Letter**”), signed by the Ultimate Designated Person and the Chief Compliance Officer of CII, to the OSC Manager, expressing their opinion that the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by CII for
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the six month period commencing from the date on which the Settlement Agreement is approved;

- c. the Attestation Letter shall be accompanied by a report which provides a description of the testing performed and/or other steps taken to support the conclusions contained in the Attestation Letter;
  - d. CII shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (b) above is valid; and
  - e. CII or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b) to (d) above.
49. CII agrees to make the payments described in subparagraphs 47 (b) and (c) above by wire transfer upon completion of the hearing before the Commission to approve this Settlement Agreement.

#### **PART V- COMMISSION STAFF COMMITMENT**

50. If the Commission approves this Settlement Agreement, Commission Staff will not commence any proceeding under Ontario securities law in relation to Commission Staff's Statement of Facts and Conclusions set out in Part III or Commission Staff's allegations set out in Part II of this Settlement Agreement, subject to the provisions of paragraph 51 immediately below pertaining to the enforcement of this Settlement Agreement. However, nothing in this Settlement Agreement shall be interpreted as limiting Commission Staff's ability to commence proceedings against CII in relation
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to any control and supervision inadequacies other than the Forward Fund Control and Supervision Inadequacy described herein.

51. If the Commission approves this Settlement Agreement and CII fails to comply with any of the terms of this Settlement Agreement, Commission Staff may bring proceedings under Ontario securities law against CII. These proceedings may be based on, but are not limited to, Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement as well the breach of this Settlement Agreement.

#### **PART VI- PROCEDURE FOR APPROVAL OF SETTLEMENT**

52. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for February 10, 2016, or on another date agreed to by Commission Staff and CII, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.
53. Commission Staff and CII agree that this Settlement Agreement will form all of the evidence that will be submitted at the settlement hearing on CII's conduct, unless the parties agree that additional evidence should be submitted at the settlement hearing.
54. Subject to the Commission approving this Settlement Agreement, CII waives all rights to a full hearing, judicial review or appeal of this matter under the Act.
55. If the Commission approves this Settlement Agreement, CII will not make any public statement that is inconsistent with this Settlement Agreement or with any additional evidence submitted at the settlement hearing. In addition, CII will not make any public statement that there is no factual basis for this Settlement Agreement. However, nothing in this paragraph affects CII's testimonial obligations or its right to
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take legal or factual positions in other investigations or legal proceedings in which the Commission and/or Commission Staff is not a party or in which any provincial or territorial securities regulatory authority in Canada and/or its Commission staff is not a party (“**Other Proceedings**”) or to make public statements in connection with Other Proceedings.

56. Whether or not the Commission approves this Settlement Agreement, CII will not use in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement, as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

#### **PART VII- DISCLOSURE OF SETTLEMENT AGREEMENT**

57. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

- a. this Settlement Agreement and all discussions and negotiations between Commission Staff and CII before the settlement hearing takes place will be without prejudice to Commission Staff and CII; and
  - b. Commission Staff and CII will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations of Commission Staff dated February 5, 2016. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.
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58. The parties will keep the terms of this Settlement Agreement confidential until the commencement of the public hearing to obtain approval of this Settlement Agreement by the Commission. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If for whatever reason, the Commission does not approve this Settlement Agreement, the terms of this Settlement Agreement remain confidential indefinitely, unless Commission Staff and CII otherwise agree or if required by law.

**PART VIII- EXECUTION OF SETTLEMENT AGREEMENT**

59. This Settlement Agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

60. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated at Toronto this 5<sup>th</sup> day of February, 2016.

CI INVESTMENTS INC.

*“Sheila A. Murray”*

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SHEILA A. MURRAY  
Executive Vice President

\_\_\_\_\_  
Witness

*“Tom Atkinson”*

\_\_\_\_\_  
TOM ATKINSON  
Director, Enforcement Branch

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## SCHEDULE "A"

### IN THE MATTER OF THE SECURITIES ACT, R.S.O. 1990, c. S.5, AS AMENDED

- AND -

CI INVESTMENTS INC.

### ORDER

(Subsections 127(1) and 127(2) and section 127.1)

#### WHEREAS:

1. On February 5, 2016, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing in relation to the Statement of Allegations filed by Staff of the Commission ("**Commission Staff**") on February 5, 2016 with respect to CI Investments Inc. ("**CII**");
  2. The Notice of Hearing gave notice that on February 10, 2016, the Commission would hold a hearing to consider whether it is in the public interest to approve a settlement agreement between Commission Staff and CII dated February 5, 2016 (the "**Settlement Agreement**");
  3. Commission Staff has alleged that between December 2009 and June 2015, a total of approximately \$156.1 million in interest (the "**Interest**") had accumulated in bank accounts set up by seven of CII's mutual funds (the "**Forward Funds**"). The Interest was earned on money deposited by the Forward Funds as collateral for forward purchase agreements that were unique to these Forward Funds. The Interest, however, was not recorded as an asset in the accounts of the respective Forward Funds and not included in the net asset value ("**NAV**") calculation of the Forward Funds. As a result, the NAV of each Forward Fund, and any fund that invested in the Forward Funds (collectively, the "**Affected Funds**"), was
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- understated for several years and unitholders bought and redeemed units at an understated value;
4. Commission Staff has further alleged that CII did not have an adequate system of controls and supervision to sufficiently address the unique cash collateral feature of the Forward Funds and to ensure that the Interest earned in the cash collateral accounts was recorded and included in the NAV calculation of the Forward Funds such that the unitholders' NAV was understated (the "**Forward Fund Control and Supervision Inadequacy**");
  5. Commission Staff are satisfied that CII discovered and self-reported the Forward Fund Control and Supervision Inadequacy to Commission Staff;
  6. Commission Staff are satisfied that during the investigation of Forward Fund Control and Supervision Inadequacy by Commission Staff, CII provided prompt, detailed and candid cooperation to Commission Staff;
  7. Commission Staff are satisfied that CII had formulated an intention to pay appropriate compensation to current and former investors in connection with its report of Forward Fund Control and Supervision Inadequacy to Commission Staff;
  8. As part of the Settlement Agreement, CII undertakes to:
    - a. Pay appropriate compensation to former and current investors that were affected by the Forward Fund Control and Supervision Inadequacy (the "**Affected Investors**") in accordance with a plan submitted by CII to Commission Staff (the "**Compensation Plan**") and to report to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission (the "**OSC Manager**") in accordance with the Settlement Agreement and the Compensation Plan;
    - b. Make a voluntary payment of \$50,000 to reimburse the Commission for costs incurred or to be incurred by it in accordance with subsection 3.4(2)(a) of the
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Act; and

- c. Make a further voluntary payment of \$8,000,000 to be designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act,

(the “**Undertaking**”);

9. The Commission will receive the voluntary payments totalling \$8,050,000 upon completion of the hearing to approve the Settlement Agreement, which payments are conditional upon approval of the Settlement Agreement by the Commission;
10. The Commission reviewed the Settlement Agreement, the Compensation Plan, the Notice of Hearing and the Statement of Allegations of Commission Staff and heard submissions of counsel for CII and from Commission Staff; and
11. The Commission is of the opinion that it is in the public interest to make this order;

**IT IS ORDERED THAT:**

- a. The Settlement Agreement is approved;
  - b. Within eight months of the approval of the Settlement Agreement, CII shall submit a letter (the “**Attestation Letter**”), signed by the Ultimate Designated Person and the Chief Compliance Officer of CII, to the OSC Manager, expressing their opinion that the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by CII for the six month period commencing from the date on which the Settlement Agreement is approved;
  - c. The Attestation Letter shall be accompanied by a report which provides a
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description of the testing performed and/or other steps taken to support the conclusions contained in the Attestation Letter;

- d. CII shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (b) above is valid; and
- e. CII or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b) to (d) above.
- f. CII shall comply with the Undertaking to:
  - i. pay compensation to the Affected Investors in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Settlement Agreement and the Compensation Plan;
  - ii. make a voluntary payment of \$50,000 to reimburse the Commission for costs incurred or to be incurred by it in accordance with subsection 3.4(2)(a) of the Act; and
  - iii. make a further voluntary payment of \$8,000,000, which is designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

DATED at Toronto, Ontario this \_\_\_\_\_ day of February, 2016.

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